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STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER _____ **90-6**

FOR: ESTABLISHING PROCEDURES FOR RECOGNITION OF EMPLOYEE ORGANIZATIONS REPRESENTING EMPLOYEES OF THE EXECUTIVE BRANCH

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, the citizens of Indiana will benefit from constructive and cooperative relationships between State employees and management; and

WHEREAS, the efficient management of the Executive Branch of State government in the public interest requires that orderly, constructive and cooperative relationships be maintained among employees, employee organizations, and management; and

WHEREAS, as chief executive of the State responsible for execution of the laws of the State, it is my responsibility to manage effectively and in the public interest the working relationship between employees in the Executive Branch and those who manage them; and

WHEREAS, the rights of employees, independently, to associate themselves together is recognized in Indiana, and there is no legal bar to their collective presentation of their employment interests to the public officials charged with the duty of fixing the terms of employment; and

WHEREAS, State employees deserve the same rights to engage in collective bargaining that are enjoyed by employees in private industry; and

WHEREAS, as Governor I have supported legislation to give public employees collective bargaining rights; and

WHEREAS, efforts to give public employees collective bargaining rights were blocked in the 1990 session of the Indiana General Assembly; and

WHEREAS, my powers as Governor do not extend to the power to institute meaningful and responsible collective bargaining by executive order; and

WHEREAS, I intend to work in the 1991 session of the General Assembly for enactment of legislation establishing meaningful and responsible collective bargaining for public employees, including state employees; and

WHEREAS, my powers as Governor do enable me to take steps to lay a foundation for collective bargaining by State employees by establishing bargaining units and providing for elections of employee representatives so that collective bargaining may be implemented quickly upon enactment of legislation;

NOW, THEREFORE, I, Evan Bayh, Governor of the State of Indiana, pursuant to the power vested in me by the Constitution and laws of this State, do hereby order the establishment of the following terms, conditions and procedures for the recognition of employee organizations.

Section 1. This Executive Order applies to all employees of the Executive Branch.

Section 2. (a) There is hereby established within the Executive Branch the Public Employees Relations Board ("PERB").

(b) The PERB shall be comprised of five (5) members appointed by and serving at the pleasure of the Governor.

Section 3. The PERB shall have the power to do the following:

- (1) Conduct elections pursuant to the Order.
- (2) Make determinations of exclusive negotiating organization recognition pursuant to this Order.
- (3) Resolve issues that may arise under this Order.

Section 4. In order to effectuate its powers under this Order, the PERB shall issue the appropriate guidelines. These guidelines may be promulgated as rules by the State Personnel Department under IC 4-15-1.8-7.

Section 5. Staff assistance as needed by the PERB shall be provided by the State Personnel Department.

Section 6. (a) "Executive Branch" means those agencies under the direct authority of the governor and those agencies under the direct authority of any other elected state officer electing coverage under Section 15.

(b) The term does not include any of the following:

- (1) Bodies corporate and politic.
- (2) State supported universities and institutions of higher education.
- (3) The budget agency.
- (4) The national guard.
- (5) The state personnel department.
- (6) The PERB.
- (7) The education employees relations board.
- (8) The state board of accounts.

Section 7. "Employee" means an individual employed by the executive branch, unless the individual is any of the following:

- (1) An intermittent employee.
- (2) A student employee.
- (3) A temporary employee.
- (4) A member of a board or commission.
- (5) A confidential employee.
- (6) A supervisor.
- (7) A managerial employee.
- (8) A patient or resident of a state institution.
- (9) An individual in the custody of the department of correction or any law enforcement agency.
- (10) The chief administrative or executive officer of an agency.
- (11) An attorney whose responsibilities include the providing of legal advice or the performance of legal research, a physician, a dentist, or an administrative law judge.
- (12) An individual who performs internal investigations.
- (13) Teachers at state institutions whose compensation is determined under any of the following:

- (A) IC 11-10-5-4.
- (B) IC 16-7-3-5.
- (C) IC 16-13-1-9.

Section 8. "Confidential employee" means an employee:

- (1) who works in a personnel office;
- (2) who has access to confidential or discretionary information regarding the formulation of policy or procedures;
- (3) who works in the office of the Governor or any state officer who provides notice pursuant to Section 15.
- (4) Whose
 - (A) functional responsibilities; or
 - (B) knowledge;concerning employee relations makes the employee's membership in an employee organization incompatible with the employee's duties; or
- (5) who is the personal secretary of the chief administrative or executive officer of an agency.

Section 9. "Managerial employee" means an individual who is:

- (1) engaged predominantly in executive and management functions; or
- (2) charged with the responsibility of directing the effectuation of management policies and practices.

Section 10. "Supervisor" means an individual having authority in the interest of the Executive Branch to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline other employees, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

Section 11. "Temporary employee" means an individual who is employed in a temporary position for not more than ninety (90) days.

Section 12. "Employee organization" means an organization:

- (1) in which employees participate; and
- (2) that exists for the purpose of dealing with an employer concerning wages, hours, settlement of grievances, and other terms and conditions of employment

Section 13. "Appropriate unit" means one of the following eleven (11) units:

- (1) Labor, trades, and crafts classes, including the following:
 - (A) Carpenters.
 - (B) Electricians.
 - (C) Plumbers.
 - (D) Print shop workers.
 - (E) Auto mechanics.
 - (F) Maintenance workers.
 - (G) Similar classes.
- (2) Administrative and technical support that include clerical and administrative nonprofessional classes, including the following:
 - (A) Typists.
 - (B) Secretaries.
 - (C) Account clerks.
 - (D) Computer operators.
 - (E) Office service personnel.
 - (F) Personnel who provide support services to professionals.
 - (G) Other nonprofessional employees who do not meet the standards of other nonprofessional units.

- (3) Regulatory, inspection, and licensure nonprofessionals that include individuals who review public and commercial activities, including the following:
 - (A) Tax examiners.
 - (B) Driver's license examiners.
 - (C) Meat inspectors.
 - (D) Similar classes.
- (4) Health and human services nonprofessionals, including the following:
 - (A) Licensed practical nurses.
 - (B) Nursing aides.
 - (C) Mental health attendants.
 - (D) Therapy aides.
 - (E) Claims takers.
 - (F) Similar classes.
- (5) Regulatory, inspection, and licensure professional employees empowered to review certain public and commercial activities, including the following:
 - (A) Revenue auditors.
 - (B) Bank and insurance examiners.
 - (C) Public health inspectors.
 - (D) Similar classes.
- (6) Health care professionals, including the following:
 - (A) Registered nurses.
 - (B) Pharmacists.
 - (C) Licensed therapists.
 - (D) Similar classes.
- (7) Social services and counseling professionals who provide services and benefits to eligible persons, including the following:
 - (A) Employment and training personnel.
 - (B) Welfare caseworkers.
 - (C) Social workers.
 - (D) Counselors.
 - (E) Similar classes.
- (8) Engineering, scientific, and information services professionals, including the following:
 - (A) Architects.
 - (B) Chemists.
 - (C) Geologists.
 - (D) Civil engineers.
 - (E) Computer programmers.
 - (F) System analysts.
 - (G) Similar classes.
- (9) Professional administrative employees with general business responsibilities, including the following:
 - (A) Accountants
 - (B) Buyers.
 - (C) Administrators.
 - (D) Other professional employee who do not meet the standards of the other professional units.
- (10) Public safety, protective service workers, and institutional security employees, including the following:
 - (A) Correctional officers.
 - (B) Building guards.
 - (C) Firefighters.
 - (D) Motor carrier inspectors of the state police department.
 - (E) Similar classes.
- (11) Sworn police officers, including the following:
 - (A) Law enforcement officers of the state police department.
 - (B) Conservation officers of the department of natural resources.

(C) Excise police of the alcoholic beverage commission.

Section 14. (a) The State Personnel Director shall determine the assignment of each employee, including the employees of state officers electing coverage under Section 15, to an appropriate unit, based on the employee's job classification and position.

(b) In determining the appropriateness of the assignment of an employee to an appropriate unit the following shall be considered:

- (1) The principles of efficient administration of government, including limiting the fragmentation of government administrative authority.
- (2) The existence of a community of interest among the employees assigned to the bargaining unit.
- (3) The recommendations of the parties involved.

Section 15. (a) An elected state officer may elect to include the officer's employees to be subject to this Order by submitting a notice to the PERB.

(b) This notice must be consistent with the provisions of this Order and may not include state employees otherwise excluded.

Section 16. An employee organization may be accorded recognition as exclusive negotiating organization for an appropriate unit pursuant to this Order.

Section 17. The State Personnel Director may recognize an employee organization as the exclusive negotiating organization of the members of an appropriate unit when the employee organization has been selected by a majority of the employees voting in an election.

Section 18. An employee organization may request that an election be held by submitting a petition for election to the PERB. The petition must be accompanied by a showing of interest by thirty percent (30%) of the employees of the appropriate unit.

Section 19. Within fifteen (15) days of determination that a valid petition has been submitted, the PERB shall notify interested employee organizations of the pending election.

Section 20. Any interested employee organizations must submit a petition of intervention which must be accompanied by a showing of interest by ten percent (10%) of the employees in the appropriate unit within thirty (30) days of notice of the pending election.

Section 21. An election under this Order shall be held within a reasonable period of time after the determination of a valid petition for election in accordance with guidelines established by the PERB.

Section 22. Recognition of an employee organization shall continue so long as such organization satisfies the criteria of this Order and subsequent guidelines applicable to recognition; but nothing in this section shall require the PERB to conduct an election in any unit within twelve (12) months after a valid election with respect to such unit had been held pursuant to the provisions of this Order.

Section 23. Recognition shall not preclude any employee or group of employees, regardless of employee organization membership, from bringing matters of personal concern to the attention of appropriate officials with a representative of his/her own choosing in a grievance proceeding in accordance with applicable rule or established policy.

Section 24. An employee organization recognized as the exclusive negotiating organization of employees of an appropriate unit shall be:

- (1) permitted to speak on behalf of all members of the unit and shall be responsible for representing the interests of all members without discrimination and without regard to employee organization membership; and

- (2) exclusively permitted to have organizational membership dues collected by paycheck withholding upon signed written request of employee conforming to law. This privilege shall be immediately revoked by the State Personnel Director in the event of a violation of Section 28(c) of this order; and
- (3) entitled to meet and negotiate with the State Personnel Director or his designee on wages, hours, and working conditions in an effort to reach a settlement subject to the approval of the Governor.

Section 25. (a) Employees shall have the right, freely and without fear of penalty or reprisal, to form, join and assist any lawful employee organization, or to refrain from any such activity.

- (b) The rights described in this section do not extend to participation in the management of an employee organization, or acting as a representative of any organization, where such participation or activity would result in a conflict of interest or otherwise be incompatible with law or with the official duties of an employee.

Section 26. Executive branch management officials retain the right and responsibility:

- (1) to direct employees;
- (2) to hire, promote, transfer, assign, and retain employees in positions, and to suspend, demote, discharge, or take other disciplinary action against employees;
- (3) to relieve employees from duties because of lack of work or for other reasons not prohibited by law;
- (4) to maintain the efficiency of the operations entrusted to them;
- (5) to determine the methods, means and personnel by which such operations are to be conducted; and
- (6) to take whatever actions may be necessary to carry out the statutory and constitutional mission of the Executive Branch.

Section 27. Solicitation of membership, dues, or other internal employee organization business may be conducted only on nonduty hours of the employees concerned.

Section 28. (a) The State is entitled to terminate the employment of any employee who participates in, threatens, or encourages any strike, slowdown, work stoppage, other interruption or interference with the activities of the State, or abstinence in whole or in part from the full, faithful, and proper performance of the employee's duties of employment.

- (b) An employee dismissed for violation of the above conditions may not be rehired by the Executive Branch for one (1) year following the dismissal.
- (c) Any employee organization that participates in, threatens, or encourages any strike, slowdown, works stoppage, or other interruption or interference with the activities of the State shall cease to be accorded recognition under this Order and shall cease to receive organizational membership dues collected by paycheck withholding.
- (d) No recognition or organizational membership dues collected by paycheck withholding shall be accorded any such employee organization for a period of one (1) year.

Section 29. This Order may be revoked or amended by the Governor at any time.

Section 30. The provisions of this Order shall in no way diminish or infringe any rights, responsibilities, powers or duties conferred by the Constitution of the State of Indiana, the Indiana Code, or the Indiana Administrative Code.

Section 31. This Order shall take effect immediately provided, however, that the PERB shall not accept any election petitions prior to July 16, 1990.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana at the Capitol in Indianapolis on this 22nd day of May, 1990.

*Signature**

BY THE GOVERNOR: Evan Bayh
Governor of Indiana

*Signature**
Attest: Joseph H. Hogsett
Secretary of State

*To obtain a copy with signatures and the Indiana Seal, please contact the State Personnel Department.